

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PENTAIR WATER TREATMENT (OH)
COMPANY (formerly known as
ESSEF CORPORATION) and
PENTAIR WATER POOL & SPA, INC.
(formerly known as PAC-FAB,
INC.) and PENTAIR WATER BELGIUM
BVBA (formerly known as STRUCTURAL
EUROPE N.V. formerly known as SFC),

Plaintiffs,

08 Civ. 3604 (BSJ)

-against-

THE CONTINENTAL INSURANCE
COMPANY (as successor by merger to
FIDELITY & CASUALTY INSURANCE
COMPANY OF NEW YORK) and
CNA INSURANCE COMPANIES,

Defendants.

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**DEFENDANTS' NOTICE OF MOTION
TO DISMISS THE FIRST AMENDED COMPLAINT**

PLEASE TAKE NOTICE that upon the accompanying declaration of Robert M. Kaplan, dated July 8, 2008, the accompanying declaration of David Lehman, dated July 7, 2008 and the accompanying memorandum of law, defendants The Continental Insurance Company, as successor by merger to defendant Fidelity & Casualty Insurance Company of New York, and CNA Insurance Companies will move this Court before the Honorable Barbara S. Jones, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, on July 31, 2008 for an order,

- (i) pursuant to F.R.C.P. 12(b)(6), dismissing the third claim for relief in the first amended complaint on the ground it fails to state a claim upon which relief can be granted;
- (ii) pursuant to F.R.C.P. 12 (b)(6), dismissing the first amended complaint to the extent it is based upon plaintiffs' claim that defendants were required to post an appeal bond on behalf of plaintiffs, on the ground it fails to state a claim upon which relief can be granted; and
- (iii) pursuant to F.R.C.P. 12(b)(6) and 17(b), dismissing CNA Insurance Companies as a defendant on the ground that the first amended complaint fails to state a claim upon which relief can be granted against it and on the ground that CNA Insurance Companies lacks the capacity to be sued.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 6.1(b) of this Court, opposing papers, if any, are to be served by July 22, 2008.

Dated: New York, New York
July 8, 2008

FERBER CHAN ESSNER & COLLIER, LLP

By: /s/Robert M. Kaplan
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